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ATTORNEY FOR APPELLEES MARION  
COUNTY DEPARTMENT OF CHILD  
SERVICES AND CHILD ADVOCATES,  
INC.:

**TAMMI FORSTER**  
Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 49A02-0801-JV-000042

APPEAL FROM THE MARION SUPERIOR COURT, JUVENILE DIVISION  
The Honorable Marilyn Moores, Judge  
Cause Nos. 49D09-0702-JT-004873,017777

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Stephanie C. (Mother) appeals the termination of her parental rights in Marion Superior Court, Juvenile Division, to her children, L.C., L.B., Ja.C., Jas.C., and T.C. Mother challenges the sufficiency of the evidence supporting the juvenile court's judgment terminating her parental rights. Mother presents the following restated issues on appeal:

1. Did the Marion County Department of Child Services (MCDCS) prove by clear and convincing evidence that the conditions resulting in the removal and continued placement of the children outside the Mother's care would not be remedied?
2. Did the MCDCS prove by clear and convincing evidence that termination of Mother's parental rights to the children was in the children's best interests?
3. Did the MCDCS have a satisfactory plan for the care and treatment of the children?

We affirm.

Mother is the biological mother of the following children: L.C., born on August 22, 1991; L.B., born on August 16, 1994; Ja.C., born on February 16, 2001; Jas.C, born on April 15, 2003; and, T.C., born on September 2, 2006. Mother and Lanny B. (Father) are not married, but have been involved in a relationship and have lived together, on and off, for approximately seventeen years. Father is the biological father of Mother's two oldest children, L.C. and L.B.<sup>1</sup>

On July 21, 2004, L.C., L.B., Ja.C., and Jas.C. were taken into temporary protective

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<sup>1</sup> Although Father is not the biological father of Ja.C., Jas.C., or T.C., he has raised and provided financial support for all five children. Father's parental rights to L.C. and L.B. were terminated on September 28, 2007. Father initiated a separate appeal of the juvenile court's judgment terminating his parental rights to L.C. and L.B. which is currently pending before this court. The biological fathers of the remaining children are either unknown, or their whereabouts are unknown. None of the fathers are parties to this appeal.

custody due to an incident of domestic violence between Mother and Father that occurred in the children's presence. On July 23, 2004, the MCDCS filed a petition alleging all four children were children in need of services (CHINS) citing the incident of domestic violence and Ja.C.'s severely decayed teeth. An initial hearing on the CHINS petition was held on the same day wherein Mother admitted to the allegations of the petition. The juvenile court subsequently found there was probable cause to believe the children were CHINS and issued an order directing the children to remain temporary wards of the MCDCS.

On August 25, 2004, following a dispositional hearing, the juvenile court entered a Participation Decree wherein Mother was ordered to participate in a variety of services in order to achieve reunification with the children. Specifically, Mother was ordered to, among other things: (1) participate in and successfully complete parenting and anger management classes; (2) submit to a drug and alcohol assessment and follow any resulting recommendations; (3) refrain from using illegal drugs; (4) obtain and maintain stable housing and employment; (5) maintain weekly contact with the case manager; (6) exercise regular visitation with the children as recommended by the case manager; and, (7) complete home based counseling. On September 15, 2004, a fact-finding hearing on the CHINS petition was held after which the juvenile court determined L.C., L.B., Ja.C., and Jas.C. to be CHINS. The juvenile court thereafter formally removed the children from the care and custody of Mother.

Mother initially complied with court orders and completed parenting and anger management classes. She also submitted to a drug and alcohol assessment and later completed an intensive outpatient program (IOP) in July 2005 after testing positive for

cocaine. However, on September 6, 2006, the MCDCS took T.C. into protective custody and filed a petition alleging T.C. was a CHINS because he had been born testing positive for THC. Mother subsequently admitted to the allegations contained in the CHINS petition, and T.C. was made a ward of the MCDCS on October 31, 2006, pursuant to a dispositional decree. The MCDCS thereafter filed a petition to involuntarily terminate Mother's parental rights to the four older children.

On November 30, 2006, a hearing commenced on the termination petition pertaining to L.C., L.B., Ja.C., and Jas.C. Mother did not appear because she could not obtain transportation to the hearing. At the conclusion of the MCDCS's case-in-chief, the juvenile court took under advisement a joint motion by Mother's and Father's attorneys for Judgment on the Evidence, which included an allegation that the MCDCS failed to timely notify Mother and Father of the hearing. On December 5, 2006, the trial court granted the parents' joint motion and dismissed the MCDCS's termination petition for failure to comply with the notice provision under Indiana Code Section 31-35-2-6.5.

Meanwhile, because Mother admitted to having used marijuana during her pregnancy with T.C., Mother was ordered to participate in a second IOP. Mother failed to immediately comply, but eventually began a new IOP on February 7, 2007, the day after the MCDCS filed its second petition for the involuntary termination of Mother's parental rights to L.C., L.B., Ja.C., and Jas.C. Mother failed to attend the second IOP session, however, due to a snowstorm. Mother thereafter never returned to the program. Mother also refused to participate in any subsequent IOP or drug screen despite multiple referrals made on March 5, 2007, May 17, 2007, July 3, 2007, and July 15, 2007.

On April 30, 2007, the MCDCS filed a separate petition to terminate Mother's parental rights to T.C. A four-day consolidated fact-finding hearing was commenced on August 22, 2007, continued on September 5, 2007 and September 12, 2007, and concluded on September 24, 2007. The juvenile court took the matter under advisement, and on September 28, 2007, the court issued its judgment terminating Mother's parental rights to all five children. The following appeal ensued.

Mother asserts the juvenile court's judgment terminating her parental rights to the children is clearly erroneous. Specifically, she claims the MCDCS failed to prove by clear and convincing evidence that the conditions resulting in removal of the children from her care would not be remedied. Mother further asserts that there was insufficient evidence to support the trial court's determination that termination of her parental rights is in the children's best interests and that the MCDCS has a satisfactory plan for the care and treatment of the children.

This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the juvenile court's decision, we must affirm.

*Id.*

Here, the court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Where the court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005). First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. *Perrine v. Marion County Office of Child Serv.*, 866 N.E.2d 269 (Ind. Ct. App. 2007).

1.

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d 832. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.

*Id.*

In order to terminate a parent-child relationship, the State is required to allege that:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

\* \* \*

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2007 1<sup>st</sup> Regular Sess.). The State must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232 (Ind. 1992).

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children. *M.M. v. Elkhart Office of Family & Children*, 733 N.E.2d 6 (Ind. Ct. App. 2000).

Mother asserts that there are "no facts which support the trial court's conclusion that the conditions that resulted in the placement of the oldest four children outside the home has not been remedied" because the reason for removal of the four older children, namely, domestic violence, no longer existed at the time of the termination hearing. *Appellant's Brief* at 10-11. The MCDCS counters that Mother "fails to acknowledge that [the] statute is

written in the alternative” such that the MCDCS may prove either that the original reasons for removal have not been remedied, *or* that the reasons for continued placement outside the home have not been remedied. *Appellee’s Brief* at 5-6. Additionally, although Mother admits that she continues to occasionally use marijuana and that T.C. was removed from her care because he tested positive for THC at birth, she argues the MCDCS “never showed a nexus between [Mother’s] marijuana use and her ability to parent.” *Appellant’s Brief* at 11. Thus, Mother concludes, reversal is required. We disagree.

In terminating Mother’s parental rights to L.C., L.B., Ja.C., Jas.C., and T.C., the juvenile court made the following pertinent findings and conclusions:

### **FINDINGS OF FACT**

\* \* \*

5. Services were ordered for Mother and Father to complete toward reunification with the children. The services, court ordered and recommended by the parenting assessment, were for both Mother and Father to complete a parenting class, domestic violence class, and drug screens. In addition, safe and adequate housing and employment were to be maintained and Mother and Father were to consistently visit the children.
6. Both Mother and Father completed parenting classes and domestic violence classes. In addition, Mother completed her psychiatric evaluation.
7. The initial drug and alcohol assessments found both parents to have a low probability of any Substance Dependency Disorder. However, as a result of Mother testing positive for cocaine in April of 2005, and Father testing positive for illegal substances on urine screens, intensive outpatient substance abuse programs were referred.
8. A CHINS petition was then filed on [T.C.] on September 6, 2006[,] . . . as a result of [T.C.] being born THC positive. Mother admitted to an amended petition and [T.C.] was formally removed from her, pursuant



to a CHINS Disposition Decree[,] on October 31, 2006.

9. Mother had completed an outpatient program in early 2005 but since Mother was using illegal drugs during her pregnancy with [T.C.] in 2006, another outpatient treatment program was recommended.
10. As a result of a lack of contact between the second family case manager and Mother, a referral to a level II outpatient program was not made until February of 2007. The program entailed three sessions a week for sixteen weeks.
11. Mother attended the first session of the program on February 7, 2007. Her second session was not attended due to a snowstorm. No further attempt was made by Mother to follow up on the program with the agency or the case manager.
12. Re-referrals for outpatient treatment programs, with urine screens, were made on March 5, 2007, May 17, 2007, July 3, 2007, and July 15, 2007. Mother attended no sessions.
13. Mother admitted she had no excuse or answer as to why she has failed to follow through with the substance abuse treatment referrals, failed to keep in contact with her case manager, or participate in drug screens within the last year. Mother also admitted she was still [smoking] marijuana.
14. Mother acknowledges she was not “doing well” in her situation and was told there was a very good possibility that her children would be taken if services were not done.

\* \* \*

18. Mother and Father never came to a point in their services where home based counseling was put in place. In the beginning of the CHINS action, Mother was cooperating with services, but Father was not. Father was maintaining the residence and Mother was not working. Concerns about the lack of participation in services, after positive drug screens, made this parental unit ineligible for commencement of home based counseling. After [T.C.] was born drug positive, additional treatment services were to be completed before home based counseling would be put in place.
19. There have been no further arrests of Mother or Father and no further

record of domestic violence. Because home based counseling has not been commenced, the family case manager and Guardian ad Litem have not observed the interaction between Mother and Father within the home.

20. Visitation was exercised by Mother at the beginning of the CHINS proceeding, and then became inconsistent . . . . Mother's visitation would have been restarted upon providing four consecutive negative drug screens.

\* \* \*

28. The children have been out of the parent[s'] home for a considerable amount of time since the original CHINS case was commenced in July of 2004. Given the parent[s'] history of inaction and unwillingness to participate in services, it is unlikely that additional time will remedy the situation and the children will remain in limbo. Services and compliance dates have been given to Mother . . . by MCDCS, at least three times by certified mail. Although Mother . . . felt [she had] done everything requested of [her] to have the children returned, the reason for the children still being placed outside the home, substance problems, has never been acknowledged or addressed, even after multiple referrals for treatment and screens.

*Appellant's App.* at 76-79.

The evidence most favorable to the judgment supports these findings, which in turn support the juvenile court's conclusion that "[t]here is a reasonable probability that the conditions that resulted in the placement of the children outside the home will not be remedied. *Id.* at 79. Although we acknowledge Mother initially participated in and successfully completed many of the court-ordered services, the record reveals that by the time of the termination hearing, she was no longer in compliance with court-ordered services and had not cooperated with service providers for approximately one year. Specifically, Mother had severed all communication with the MCDCS. Case manager Keith Terrell testified that even though he had been assigned to Mother's case since November 13, 2006,

Mother had never contacted him despite the fact he had left telephone messages, written letters, and made multiple referrals for IOPs and drug screens. Additionally, Mother's refusal to submit to drug screens prevented her from visiting with her children since October 26, 2006. When asked during the termination hearing why she had failed to submit to urine screens and participate in the IOP after T.C. was born, Mother stated she had "no answer" to explain her non-compliance even though she acknowledged having received multiple referrals to do so, as well as having been warned that "it was a very good possibility" her children would not be returned to her if she failed to complete services. *Transcript* at 132, 142. Also significant is Mother's admission that she still occasionally uses marijuana.

A juvenile court may properly consider the services offered by the Department of Child Services and the parent's response to those services as evidence of whether conditions will be remedied. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. Additionally, in evaluating a parent's habitual pattern of conduct, courts have properly considered, among other things, evidence of a parent's prior drug and alcohol abuse, history of neglect, and failure to provide financial support. *Id.* Based on the foregoing, we find that the juvenile court's determination that the reasons for the children's continued placement outside Mother's care would not be remedied is clearly supported by the evidence. Moreover, Mother's assertion that the MCDCS was required to prove a nexus between Mother's drug use and her inability to care for her children is also unavailing. As Mother admits in her brief, "Indiana Code Section 31-35-2-4, does not require . . . proof of nexus between the parent's behavior and the physical or mental condition of the child." *Appellant's Brief* at 11; *see also A.P. v. Porter County Office of Family &*

*Children*, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000) (stating that the elements set forth in Indiana Code Section § 31-35-2-4 for the termination of parental rights are exclusive), *trans. denied*. Accordingly, we find no error.

2.

Next, we address Mother's assertion that the trial court erred when it found termination of her parental rights is in the children's best interests. In making this claim, Mother simply states, "The MCDCS plan is to separate the children which is not satisfactory and not in [the children's] best interests[s]." *Appellant's Brief* at 2. However, she fails to provide any cogent argument or citation to authority to support her allegation. Thus, this issue is waived. *See* Indiana Appellate Rule 46(A)(8)(a) (the contentions of the appellant on the issues presented "must be supported by citations to authorities, statutes, and the Appendix or parts of the Record on appeal relied on"). Waiver notwithstanding, we will address Mother's contention that termination of her parental rights is not in the children's best interests on the merits.

In determining what is in the best interests of the children, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). The purpose of terminating parental rights is not to punish the parents but to protect the children involved. *In re K.S.*, 750 N.E.2d 832. The juvenile court must therefore subordinate the interests of the parents to those of the children when determining the best interests of the children. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185. Additionally, the juvenile court need not wait until a child is irreversibly

harmful before terminating the parent-child relationship. *Id.*

In determining that termination of Mother's parental rights was in the children's best interests, the juvenile court made the following pertinent findings:

24. [L.B.] and [L.C.'c] placement is pre-adoptive.
25. [Ja.C.], [Jas.C.] and [T.C.] are placed together in a pre-adoptive foster home. Although [Ja.C.] and [Jas.C.] are receiving treatment for behavioral issues, all three children are doing well and interacting appropriately. Keith Terrell, the MCDCS family case manager, observed the children to be bonded with their foster parents.
26. The most proper placement for the children is to remain where they are and have been receiving therapeutic care for their special needs.
27. It is in the best interests of the children that they receive the feeling of stability and security that a permanent home will provide.

\* \* \*

29. Shirley Murff, as Guardian ad Litem, believes it to be in the best interests of the children to proceed with termination given the time that has elapsed and lack of participation in services by the parents. The eldest child, [L.C.], is the only child that expressed a wish to return to live with her parents.

*Appellant's Appendix* at 78-79. The record reveals that these findings are supported by testimony from several witnesses, including the Guardian ad Litem (GAL), the current MCDCS case manager, and the psychologist. GAL Shirley Murff testified that she had visited with all the children in their current placements and agreed with the MCDCS's permanency plan for the children, namely, termination of Mother's parental rights and adoption by their current foster parents. In so doing, Murff stated that all five of the children are "doing well" in their current foster care placement. *Transcript* at 469. Similarly, case manager Terrell testified that termination was in the children's best interests. Specifically,

Terrell stated that the children are “doing very well in placement and they have bonded” with their foster parents. *Id.* at 384. Terrell further stated that he could not recommend returning the children to Mother because of her lack of participation in services and continued drug use. Additionally, Dr. Ann Lovko, psychologist and counselor for Ja.C. and Jas.C., testified that although she had not observed the children interact with Mother, she had observed them with their foster mother and felt the girls were bonded with their foster mother. Lovko further testified that the girls had been improving while in foster care, but that they needed consistency and a feeling of security and permanency. Consequently, Lovko felt that it was in the children’s best interests to resolve the matter quickly.

Our review of the record leaves this court convinced that although Mother may have established she has a sincere desire to be reunited with her children, the testimony set forth above, coupled with the evidence of Mother’s current drug use, her failure to complete court-ordered services, and the fact the children were happy, bonded with and doing well in their pre-adoptive foster homes, is sufficient to support the juvenile court’s determination that termination of Mother’s parental rights is in the children’s best interests. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of the court appointed special advocate and family case manager, coupled with evidence that the conditions resulting in placement outside the home will not be remedied, was sufficient to prove by clear and convincing evidence that termination was in child’s best interest), *trans. denied*; *see also McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185 (concluding that testimony of case manager and GAL regarding the child’s need for permanency supported a finding that termination was in the child’s best interests).

3.

Mother's final contention is that the MCDCS failed to prove it had a satisfactory plan for the care and treatment of the children. In particular, she claims the children "are bonded to [Mother] and to each other" and that the MCDCS's plan for the children to be adopted into two different families is "unsatisfactory[.]" stating that "[c]learly, it would be much better for the children to remain together as a sibling group." *Appellant's Brief* at 12-13.

As stated earlier, in order for the juvenile court to terminate a parent-child relationship, the trial court must find that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(D). This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *In re D.D.*, 804 N.E.2d 258.

At the termination hearing, Terrell testified that the MCDCS's plan for the care and treatment of the children is adoption by their current foster parents. Terrell further testified that L.C. and L.B. are in therapeutic foster care together, that Ja.C., Jas.C., and T.C. are together in another pre-adoptive foster home, and that all the children are doing very well in their current placements. In light of this evidence, we cannot conclude that the plan set forth by the MCDCS for the adoption of the children, albeit in different homes, is unsatisfactory. *See Castro v. State Office of Family & Children*, 842 N.E.2d 367 (Ind. Ct. App. 2006) (observing that adoption is generally a satisfactory plan for the care and treatment of children after termination of parental rights), *trans. denied*.

As stated previously, we reverse a termination of parental rights "only upon a showing of 'clear error' – that which leaves us with a definite and firm conviction that a mistake has

been made.” *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *In re Egly*, 592 N.E.2d at 1235). Based on the record before us, we cannot say that the juvenile court’s termination of Mother’s parental rights to the children was clearly erroneous. We therefore affirm the juvenile court’s judgment terminating Mother’s parental rights to L.C., L.B., Ja.C., Jas.C. and T.C.

Judgment affirmed.

KIRSCH, J. and BAILEY, J., concur